

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's Rules)
Regarding Multiple Address Systems)

WT Docket No. 97-81

To: The Commission

**APPA'S COMMENTS
IN SUPPORT OF THE PETITION TO LIFT THE FREEZE ON MAS
APPLICATIONS OR IN THE ALTERNATIVE FOR A LIMITED EXCEPTION
TO THE FREEZE**

The American Public Power Association (APPA) respectfully submits these comments in support of the Emergency Petition filed by the Critical Infrastructure Industry (CII), to lift the freeze on Multiple Address System (MAS) applications in the 928/952/956 MHz bands.¹ In the alternative, APPA requests that this pleading be treated as a "Petition for a Limited Exception to the MAS Application Freeze," with respect to state and local government entities, as is required by the specific terms of the Balanced Budget Act of 1997.²

APPA is the national service organization representing the interests of more than 2,000 public, not-for-profit electric utilities that provide electricity to one in every seven Americans in the continental United States. APPA's members include municipalities, counties, authorities, states and public utility districts (collectively referred to as "public power utilities"). While several large cities operate their own electric utilities, including Los Angeles, Seattle, Cleveland, Nashville, Jacksonville, San Antonio and Austin, approximately three-quarters of APPA's members serve rural communities with populations of less than 10,000.

¹ CII filed its petition on July 23, 1999.

² *The Balanced Budget Act of 1999*, P.L. No. 105-33 (enacted August 5, 1997).

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I. Background

The Federal Communications Commission (FCC) initiated a proceeding in 1997 to address the future licensing of the 900 MHz MAS bands.³ In that *NPRM*, the FCC proposed a variety of changes for the MAS spectrum allocations. The FCC proposed to designate most of the spectrum in the 932/941 MHz bands and all of the spectrum in the 928/959 MHz bands for subscriber-based services, and to use competitive bidding to choose among mutually exclusive applications for licenses in these bands.⁴ Significantly, the Commission also proposed to designate the 928/952/956 MHz bands exclusively for private, internal use, and not to utilize competitive bidding to select among mutually exclusive applications in these bands.⁵ Consistent with this proposal, the FCC adopted a freeze on the filing of applications in the 928/952/956 MHz band by entities seeking to utilize this spectrum for subscriber-based services.

In response to the initial *NPRM*, the Commission received a number of comments, the overwhelming majority of which confirmed that the predominant current and future users of the MAS bands are comprised of state and local government entities, electric, gas and water utilities of all forms of ownership, and other providers of the nation's critical infrastructure. These comments further confirmed that the vast majority of the actual users of the 928/952/956 MHz band utilize this spectrum purely for private, internal MAS applications related to public safety and public service. As the comments revealed, the primary use of the MAS channels is for the

³ *Amendment of the Commission's Rules regarding Multiple Address Systems*, WT Docket No. 97-81, *Notice of Proposed Rule Making (NPRM)*, 12 FCC Rcd 7973 (1997).

⁴ *Id.*, at 7979-80, 97.

⁵ *Id.* at 7980.

operation of system control and data acquisition systems (SCADA) and telemetry systems by electric, gas, water and waste water utilities, including public power utilities, and state and local government entities.

For example, as noted by the CII, these systems are used by utilities to remotely monitor and control electric distribution substations, line switches and capacitor banks, to track and report power consumption, and for other real-time monitoring and control over widely-scattered utility system components. In addition, utilities have invested hundreds of millions of dollars implementing sophisticated automatic meter reading systems in order to provide more efficient service.

Subsequent to the release of the *NPRM*, Congress enacted the *Balanced Budget Act of 1997 (BBA)*, which amended the FCC's spectrum auction authority by eliminating a previous exemption for spectrum whose principal use was not for subscriber-based services. At the same time, the BBA created a specific statutory exemption from spectrum auctions for "public safety radio services," which are defined under the Act as:

[P]rivate internal radio services used by *State and local governments* and non-government entities and including emergency road services provided by not-for-profit organizations, that -- (i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public.⁶

As a result of this change in the law, the FCC concluded that it should reopen the record in order to assess the impact of the BBA on the Commission's initial proposals and tentative conclusions for the MAS spectrum. Specifically, with respect to the 928/952/956 MHz band the FCC's *Further Notice of Proposed Rulemaking (FNPRM)* inquired as to "whether or not the auction

⁶ BBA at Title III, § 3002, adding a new Section 337(f)(1) to Title III of the Communications Act of 1934, emphasis added.

exemptions set forth in 309(j)(2) apply, and if so, whether "public radio safety services" represent the current dominant users of this band to such an extent that the Commission should allocate part, or all, of this band for such public radio services."⁷ At the same time, in order to preserve its flexibility with the use of this band pending the outcome of the *FNPRM*, the FCC expanded the scope of its earlier freeze on the acceptance of applications for subscriber-based applications for the use of this band to now include all new applications, irrespective of the type of applicant or proposed use.

II. The Freeze On Licensing In The 928/952/956 MHz Band Must Be Lifted With Respect To Public Safety Radio Service Users

A. The FCC Should Lift The Freeze As Requested By The CII Petition

Promptly after the enactment of the freeze, CII filed a petition to lift the freeze with respect to utilities, pipelines, railroads and other public safety entities that rely on the 928/952/956 MHz band, arguing that the freeze serves no valid purpose and will adversely affect public safety.

APPA urges the Commission to grant these petitions. The extension of the freeze to state and local government entities and other public safety radio users is wholly unwarranted, contrary to Congressional intent and inconsistent with the underlying record in this proceeding. The application of the freeze to APPA's members impedes the ability of public power utilities to safely provide reliable electric service and frustrates on-going energy system construction efforts that have been planned, budgeted and initiated by local governments around the country.

⁷ *FNPRM*, ¶ 20.

APPA agrees with the CII that the public safety radio service auction exemption clearly applies to the MAS spectrum. The statutory language in no way limits the application of the auction exemption to discrete bands, but instead applies wherever public safety radio users have a specific need and are among the predominate users of the spectrum. Moreover, as is illustrated by the comments submitted in response to the *NPRM* and *FNPRM*, the overwhelming current and anticipated use of the 928/952/956 MHz bands is by public safety radio services.⁸

As noted by CII, in the Conference Committee report that accompanied the BBA, Congress clarified that the scope of the spectrum auction exemption included utilities stating:

[The] exemption from competitive bidding authority for "public safety radio services" includes "private internal radio services" used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances and volunteer fire departments.

This statement unequivocally demonstrates that Congress recognized that because utilities and others rely on private internal radio systems to protect the safety of life, health and property, and that therefore the public interest is best served by ensuring that such users of critical services are not jeopardized by spectrum auctions.

Given the undisputed evidence that utilities, entities of state and local government and other public safety entities are the predominant users of the band, and that Congress specifically intended that such entities be exempt from auctions, the FCC must necessarily conclude that the 928/952/956 MHz band should be reserved for public safety radio service users, including public power utilities. Accordingly, the imposition of the freeze only serves to frustrate and hinder the ability of exempt entities to provide public service, in precisely the manner that Congress sought to avoid in creating the public safety exemption.

⁸ According to the CII analysis, 75.9% of the applications for MAS in 1999 was by auction-exempt entities.

B. At a Minimum The FCC Should Lift The Freeze With Respect To State and Local Government Entities

While APPA fully supports the CII petition and believes that the BBA auction exemption applies to all utilities, railroads and pipelines, it nevertheless urges the FCC to recognize that, at a minimum, it should lift the freeze with respect to state and local government entities, including public power utilities. In addition to the legislative history that the CII relies upon, the express statutory language of the BBA fully demonstrate that Congress intended that public power utilities be exempt from spectrum auctions. As indicated above, the statutory exemption explicitly applies to "private internal radio services used by state and local governments." Thus, the exemption clearly applies to public power utilities that are units of state and local government, and affords the Commission no latitude with respect to interpreting this provision.

Moreover, state and local government use of MAS channels is inextricably related to the protection of life, health and property as is required by the statute. This is because by their very nature and charter local governments are charged with protecting the welfare of their communities. Because of the inherent safety issues involved in operating electric utility systems, public power utilities rely on sophisticated telecommunications systems to manage, monitor and control their electric facilities. MAS is often the most efficient, reliable, secure and cost effective communications system to carry out these critical functions. In addition to electric utility applications, many state and local governments operate MAS systems that involve other public safety applications ranging from controlling gas distribution regulators, or wastewater treatment facilities to flood control and early warning systems. Often in smaller communities a single municipal utility department will be responsible for the operation of all of the communications networks within the city, including in some instances systems related to police, fire and emergency

services.

Finally, consistent with the second requirement of the spectrum auction exemption, state and local government MAS systems, including those operated by public power utilities, are not made commercially available to the public. Because state and local government MAS networks are operated as an internal tool in support of their underlying public service activities and obligations they are not utilized on a commercial basis.

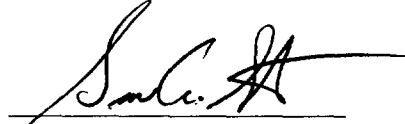
The freeze is already impeding the ability of state and local government utilities to implement critical systems as is demonstrated by the comments of LaFollette Utilities Board and the Electric Utility Department of the City of Lodi. Moreover, because of the specialized nature of MAS systems there are often no commercially available substitutes for the operation of these systems. This is particularly true in the rural areas where many of APPA's members operate. As a result, the freeze is not only frustrating Congressional intent, but is also having the very real effect of interfering with the operation of critical government-owned utility systems, which could compromise the integrity of these systems and potentially jeopardize public safety.

III. Conclusion

For all of the above reasons, APPA urges the Commission to promptly lift the freeze on the filing of applications for the 928/952/956 MHz band as requested by the CIL, or at a minimum to lift the freeze with respect to state and local government entities, including public power utilities.

WHEREFORE, THE PREMISES CONSIDERED, APPA respectfully urges the Commission to take action in accordance with the views expressed in this pleading.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James Baller', written over a horizontal line.

James Baller

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October 7, 1999